

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PIERRE J. TEDDERS, D.D.S.

and

No. 1:20-cv-00251

AMERICAN ACADEMY
OF IMPLANT DENTISTRY

HON. PAUL L. MALONEY

Plaintiffs,

MAG. PHILLIP J. GREEN

v

ORLENE HAWKS
DIRECTOR
MICHIGAN DEPARTMENT OF LICENSING
AND REGULATORY AFFAIRS

and

DEBRA GAGLIARDI
DIRECTOR
BUREAU OF PROFESSIONAL LICENSING

and

FORREST PASANSKI
DIRECTOR
BUREAU OF PROFESSIONAL LICENSING
ENFORCEMENT DIVISION

and

PETER CHIARAVALLI
CHAIRPERSON
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

RITA HALE
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

PAULA WEIDING
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

TIMOTHY SCHMAKEL
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

VAIJANTHI OZA
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

CHERYL BENTLEY
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

MARK JOHNSTON
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

PATRICIA ROELS
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

KATHLEEN INMAN
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

JOSHUA GOODRICH
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

LORI BARNHART
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

IRENE TSENG
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

GRACE CURCURU
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

MARTHA MORGAN
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

HASSAN YEHIA
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

DEBORAH BROWN
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

KATHLEEN WEBER
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

KRISTI THOMAS
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

and

FONDA BREWER
MEMBER
MICHIGAN BOARD OF DENTISTRY
BUREAU OF PROFESSIONAL LICENSING

Defendants.

Justin C. Withrow (P84071)
Colin J. Callahan (PA: 328033)
Attorney for Plaintiffs
1375 E. 9th St., 30th Floor
Cleveland, OH 44114
(216) 302-7573 (Justin)
(412) 477-8054 (Colin)

Bridget K. Smith (P71318)
Attorney for Defendants
Michigan Department of Attorney General
Licensing and Regulation Division
G. Mennen Williams Bldg., 3rd Fl.
525 West Ottawa Street
Lansing, MI 48933
(517) 335-7569

DEFENDANTS' MOTION TO DISMISS

Defendants Orlene Hawks, Director of the Michigan Department of Licensing and Regulatory Affairs (LARA), Debra Gagliardi, Director of LARA's Bureau of Professional Licensing (BPL), Forrest Pasanski, Director of BPL's Enforcement Division and the members of the Board of Dentistry, by counsel, move this Court to dismiss Plaintiff's complaint under Fed. R. Civ. P. 12(b)(1) and (6).

Plaintiffs, Pierre J. Tedders, D.D.S. and American Academy of Implant Dentistry (AAID), have sued the named defendants alleging that the Michigan Public Health and associated administrative rules are unconstitutional to the extent they limit recognized dentistry specialties in the state of Michigan. Plaintiffs' complaint stems from a January 24, 2020 administrative complaint BPL filed against Dr. Tedders alleging false advertising in violation of section 16221(d)(i)

of the Public Health Code, MCL 333.1101 *et seq.*. The complaint alleges that Dr. Tedders' advertises himself as a "board certified implantologist" when no such dentistry specialty exists in the state of Michigan. That disciplinary action is ongoing.

Because the state action is still pending, *Younger* abstention bars Plaintiffs' claims. Further, Defendants are entitled to Eleventh Amendment immunity. Finally, Defendants have not taken any action against Plaintiff AAID, and they have failed to establish that they have otherwise suffered an actual injury as a result of Defendants' alleged actions, and therefore lack standing to bring this suit.

As required by W.D. Local Rule 7.1(d) on May 18, 2020, Defendants sought Plaintiffs' concurrence in the relief requested via telephone. Plaintiffs denied concurrence, necessitating the filing of this motion.

For the reasons stated above and discussed more fully in Defendants' brief, Defendants respectfully request that this case be dismissed in its entirety.

Respectfully submitted,

Dana Nessel
Attorney General

/s/ Bridget K. Smith
Assistant Attorney General
Attorneys for Defendants
Licensing & Regulation Division
P.O. Box 30758
Lansing, Michigan 48909
517-335-7569
SmithB41@michigan.gov
(P71318)

Dated: May 19, 2020